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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/524,071	02/09/2005	Hannes Floessholzer	AT 020051	4207

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS
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EXAMINER	
SEVERSON, RYAN J	

ART UNIT	PAPER NUMBER
3731	

MAIL DATE	DELIVERY MODE
03/03/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/524,071	FLOESSHOLZER ET AL.	
	Examiner	Art Unit	
	Ryan J. Severson	3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 November 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-13* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-13* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. **Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Magnus et al. (2,423,245) in view of Bosland (3,802,309) and Polley (2,951,140).**

3. Regarding claim 1, Magnus reference discloses a device for extracting hairs using adhesive tape. The device comprises a housing (Figure 5, Ref. Numeral 1) designed to accommodate a supply (Ref. Numeral 2) of depilating tape (Ref. Numeral 7), an application means (Ref. Numerals 8 and 20) for applying the tape, and an opening in the housing to allow access to the skin for the tape. However, Magnus reference does not disclose the use of a motor to drive the wind-up reel operated by a control button. Attention is drawn to Bosland reference, which teaches the use of a motor (Ref. Numeral 27) operated by a control button (Ref. Numeral 60) to drive a supply reel of tape in a tape dispenser for ease and efficiency of operation. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the knob, which operates the wind-up reel of Magnus reference, with a motor as taught by Bosland reference for ease and efficiency of operation.

4. Further regarding claim 1, the combination of Magnus and Bosland reference does not disclose a heater for heating the depilating tape. Attention is drawn to Polley

reference, which teaches a heating device (80 and 81) may be used with a spring (100) to heat tape to allow for stronger adhesion between the tape and the surface it is applied to. The heating device can move between a home position away from the tape to a heating position to heat the tape (see column 6, line 47 through column 7, line 40). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include a heating device, as taught by Polley reference, with the device of the combination of Magnus and Bosland references to allow for stronger adhesion between the tape and the surface it is applied to.

5. Regarding claim 1, the tape used in Magnus et al. reference can be varied (see Column 4, Lines 3-12) and therefore the wax depilatory tape of the instant application can be used in the Magnus et al. device. The determination means is interpreted to be the control button released to sever the electrical connection in the device, thereby stopping the movement of the tape. Since the motor turns the wind-up reel, which takes tape directly from the skin and off of the supply reel, an application length can be determined by the amount of time the control button is pressed. The longer the button is held, the more tape will be affixed to the skin of the patient and retracted.

6. Regarding claim 2, the blocking means is interpreted to be the brake of Bosland reference. When the button is pressed it is in the first position, which drives the motor causing tape to be removed from the supply reel, applied to the skin, and removed and taken-up by the wind-up reel. When the button is released (the second position), the brake engages the drive shaft and stops it from further motion, thereby not allowing any more tape to be removed from the supply reel.

7. Regarding claim 3, the application means (8 and 20) of Magnus reference can have application rollers (see Column 5, Lines 4-7) disposed at the distal ends thereof.

8. Regarding claim 4, the cutting device (Ref. Numeral 74) of Bosland reference could be placed at the end of the device of Magnus reference in order to cut the tape after it has passed the application roller.

9. Regarding claim 5, the blocking means interacts with the supply reel by stopping rotation of the motor drive shaft, therefore stopping the removal of tape from the supply.

10. Regarding claim 6, the wind-up reel (Ref. Numeral 4) is designed to take up the depilating tape that was previously adhered to the skin.

11. Regarding claim 7, the drive connection of Bosland reference is the gear train (Figure 7, Ref. Numeral 28), which connects the drive shaft of the motor to the tape reel. In the Bosland reference, the motor is used to dispense or remove tape from the supply reel. Since Bosland reference discloses the motor is battery powered the motor is thereby powered by direct current. As is well known in the art, direct current motors are capable of being powered forward and backward. Therefore, the Bosland motor is capable of taking-up tape that has been previously adhered to the skin of a person. The action of the motor is used to extract the hair that is attached to the adhesive tape, thereby replacing the multiple steps of tensioning the hair with the knob and manually yanking the device away from the skin to extract hair and creating an easier and more efficient operation.

12. Regarding claim 8, the means for interrupting the drive connection of Bosland reference is interpreted to be completion or interruption of the electrical circuit by the control button (see Figure 3, Ref. Numeral 60).

13. Regarding claim 9, the control button of Bosland reference actuates the motor and the drive means by completing the electrical circuit, thereby providing power from the battery to the motor to turn the drive shaft, which drives the drive connection or gear train, which then finally turns the wind-up reel to take-up the tape and extract hair.

14. Regarding claims 10-12, Polley reference uses a lever or button (10) to move the heater. However, the combination of Magnus, Bosland, and Polley references does not disclose a button that moves the heater and either blocks or allows pulling of the tape from the supply. However, it has been held that that broadly providing an automatic or mechanical means to replace a manual activity which accomplished the same result is not sufficient to distinguish over the prior art. *In re Venner*, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958). Therefore, it would have been obvious to one of ordinary skill in the art to have made these various functions controlled with a single button instead of multiple buttons to increase the ease of operation.

15. Regarding claim 13, the heater is capable of applying heat prior to cutting the tape.

Response to Arguments

16. Applicant's arguments filed 17 November 2008 have been fully considered but they are not persuasive.

17. Applicant argues the combination as set forth above fails to disclose or teach the tape moving relative to the heater while being heated, and before being cut. However, the only structure relied upon from Polley is the heater itself, and not the manner in which the tape is fed into the heater and when the tape is cut. Both Magnus and Bosland show tape that can be continuously fed, and including a heating device at any location on the combination of Magnus and Bosland is within the level of one of ordinary skill in the art.

Conclusion

18. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

19. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan J. Severson whose telephone number is (571) 272-3142. The examiner can normally be reached on Monday - Friday 8:30-5:00.

21. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

22. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. J. S./
Examiner, Art Unit 3731
26 February 2009

/Anhtuan T. Nguyen/
Supervisory Patent Examiner, Art Unit 3731